UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 32

IN THE MATTER OF:	
BUD ANTLE, INC.	
	CASE 32-CA-078166

AND

TEAMSTERS LOCAL UNION NO. 890, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

James F. Hendricks, Jr. **Lewis Brisbois Bisgaard & Smith,LLP**550 W. Adams St., Suite 300
Chicago, IL 60661

Telephone: (312) 345-1718 Facsimile: (312) 345-1778 jhendricks@lbbslaw.com

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Counsel for the Employer respectfully submits the following brief to the National Labor Relations Board:

I. STATEMENT OF CASE

The Respondent is a wholly owned subsidiary of Dole Fresh Vegetables, Inc. They are engaged in harvesting and processing of vegetables at various facilities located in Salinas Valley, Oxnard, Huron and Imperial Valley, California. The Respondent also has harvesting facilities in Yuma, Arizona.

Respondent has a lengthy history of A collective bargaining relationship with Teamsters Local Union No. 890, the most recent collective bargaining agreement (CBA) is the 2011-2014 Master Agricultural Collective-Bargaining Agreement. This agreement has been in effect at all relevant times to the subject proceedings.

Local 890 filed four separate grievances; (1) the individual performance based termination grievance for Mr. Heredia; (2) a Salinas Valley lettuce grievance; (3) individual performance-based termination grievance of Mr. DeAnda; and (4) a broad "hiring grievance" applicable to all company

harvesting operations throughout California and Arizona.

However, the underlying unfair labor practice charge only references Mr. Heredia's individual termination grievance. Yet Local 890 and the Board want to expand their grievance into a request for "subcontracting information," which has nothing to do with the subject grievance and unfair labor practice charge.

II. ARGUMENT

The Administrative Law Judge found that the allegations in paragraphs 8, 9, and 10 are closely related to those of the underlying charge in the allegations in paragraph 7 are identical to the allegations in charge, therefore, finding jurisdiction to consider the complaint's allegations. However, the information requests from the Union have virtually nothing to do with the termination cases over which the grievances were filed, on whether they were qualified applicants. The Judge found the request from the Union to be "presumptively relevant" to the Union's collectivebargaining duties, citing Southern California Gas Co., 342 NLRB 613, 614 (2004). However, the ALJ failed to read the balance of the court's findings werein the court in Southern California Gas stated "the rationale for this presumption is that the information is at the "core of the employer/employee relationship." Citing LBT, Inc., 339 NLRB No. 72, slip op at 2 (2003). Further, the court stated "when a Union requests information which is not ordinarily relevant to his performance as bargaining representative, but which is alleged to have become so because of peculiar circumstances, the Union has the burden of proving relevance before the employer must comply." NLRB v. George Koch Sons, Inc., 950 F.2d 1324, 1331 (7th Cir. 1991). In the instant case, the Union made no such attempt to show the relevance of their request.

In the February 17th request concerning the grievance of Juan Heredia, the overly broad requests had nothing to do with the work performance and or discipline of Mr. Heredia.

Similarly, in the March 12th request concerning the California Yuma cauliflower crews, the request was a mere fishing expedition for information to which the Union is not entitled.

Also, the March 26th request concerning the grievance filed on behalf of Pedro DeAnda, a lettuce cutter, was a refusal to hire case, again having nothing to do with subcontracting.

In each of these grievances, the Union has failed to establish the relevance of the requested information. However, the Administrative Law Judge somehow gave credence to these requests. As a consequence, the Employer takes exception to the ALJ's findings that "I find there is a probability that the information sought is relevant and necessary to the Union's collective bargaining duties." She failed to state the degree of probability.

The Judge further finds, remarkably, that "the documents requested in the Union's grievance of February 17th are relevant to the issue of whether Heredia and other applicants were not being utilized in violation of CBA and LOU," rather than putting the burden on the Union to prove the relevance of the request before the employer must reply. There was no such representation by the Union.

Again, the ALJ found ". . . it is clear that utilization of farm labor contractor crews rather than hiring additional celery harvest employees is the basis of the grievance. The documents requested relate directly to this contention." Such a finding by the ALJ in support of the Union's grievance if founded upon this "red herring" argument, as this was the attempt of the Union to justify seeking subcontracting information rather than pursuing the facts behind the non-hiring/discipline of former employee Heredia.

The same can be said for the ALJ's finding that "the March 12th grievance was filed and documents requested were directly related to whether contractors were performing bargaining unit work." Simply put, the ALJ bought into the Union's spacious argument that it's about

"subcontracting" rather than the individual grievance that they were pursuing. The subcontracting requests were merely a veiled attempt to extract information from the Employer to which the Union is not entitled and which would violate the privity of contract between the Employer and its vendors and/or suppliers.

The Administrative Law Judge state that "the March 12th grievance was filed and documents requested were directly related to whether contractors were performing bargaining unit work. The March 26th grievance was filed when Respondent refused to hire DeAnda, a lettuce cutter, and instead hire additional farm labor contractor crews." Remarkably, there is **nothing** in the record which shows that the Respondent hired additional farm labor contract crews, contrary to the ALJ's findings. Such a broad leap in the ALJ's findings shows nothing but abject support for the Union's unfounded position.

III. CONCLUSION

As noted above, the record is completely void of the Union proving its burden of relevance before the Employer must comply with the hollow argument that the employer is subcontracting its work to non-unit employees. Rather, the Union merely is attempting to utilize the individual grievances which have nothing to do with subcontracting to justify its attempt at seeking information to which it is not entitled.

Should the Board choose to sustain the ALJ's findings, and direct that the confidential agreement be disclosed to the Union, it should only do so under a protective order.

Wherefore, the Respondent Employer asks that the Decision of the Administrative Law Judge be set aside and that the Board dismiss all allegations in the Complaint.

Dated this 13th day of February, 2013

Respectfully Submitted,

/s/ James F. Hendricks, Jr.

James F. Hendricks, Jr. Attorney for Employer

Lewis Brisbois Bisgaard & Smith,LLP

550 W. Adams St., Suite 300

Chicago, IL 60661

Telephone: (312) 345-1718 Facsimile: (312) 345-1778 jhendricks@lbbslaw.com

CERTIFICATE OF SERVICE

I certify that on this 13th day of February, 2012, Respondent's Exception to the Administrative Law Judge's Decision was filed electronically through the NLRB's website, and a copy was served on the following individuals, via e-mail:

Gary Shinners, Acting Executive Secretary National Labor Relations Board Office of the Executive Secretary 1099 14th Street, N.W. Washington, D.C. 20570 gary.shinners@nlrb.gov

Gabriela Alvaro National Labor Relations Board 1301 Clay St., Suite 300N Oakland, CA 94612 gabriela.alvaro@nlrb.gov

David A. Rosenfeld Weinberg Roger & Rosenfeld 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501 drosenfeld@unioncounsel.net

/s/ James F. Hendricks, Jr.

James F. Hendricks, Jr. **Lewis Brisbois Bisgaard & Smith,LLP**550 W. Adams St., Suite 300

Chicago, IL 60661

Telephone: (312) 345-1718 Facsimile: (312) 345-1778 jhendricks@lbbslaw.com

Attorneys for Employer